

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 27, 2004

Write your answer to Questions 1 and 2 in Answer Booklet A - (the **WHITE** booklet)

1. Izzy Jones, a resident of Warrenton, Virginia, owned 1,000 shares of the capital stock of First National Bank of Virginia, N.A. (the "Bank"). The stock, which has never paid a dividend, was purchased for \$1 per share in 1948 and is worth \$500 per share as of June 30, 2004, the end of the Bank's most recent fiscal year.

Izzy had a great niece, Cameron, for whom he had grandfatherly affection. His only other living relative was Izzy's sister, Gladys, who lived in Culpeper, Virginia. In 1994, when Cameron was ten years old, Izzy wrote her a letter in which he said: "Cameron, I am giving you all of my stock in the First National Bank of Virginia with the hope that you will use it to pay for college and medical school. When you look back you can see that Uncle Izzy thought the world of you, just as he told you he did."

Izzy then endorsed the back of the stock certificates, properly assigning each to Cameron, placed all of them in an envelope, on the outside of which he wrote "Please hand this to Cameron after my death," and gave the envelope to his lawyer, Ronny Church. Ronny, who had written Izzy's will, put the envelope in his law office safe and made a notation in the will file that the envelope should be retrieved from the safe upon Izzy's death. No change in ownership was noted in the stock records of the Bank.

The will, which was properly witnessed and executed, was kept by Izzy at the local branch office of the Bank, in his safe deposit box, for which there were two keys -- one held by Izzy and the other by Gladys. The will left \$10,000 to Gladys and the remainder of the estate to the Children's Hospital of Washington D.C. (the "Hospital"). The will made no mention of the Bank stock or of Cameron.

Izzy died on July 1, 2004. Ronny took the envelope from his safe and gave it to Cameron, who is now 20 years of age. The Bank has refused to transfer the stock on its books. Cameron, Gladys, and the Hospital each claim they own the stock.

What is Cameron's best argument that she owns the stock, and is that argument likely to prevail against the claims of Gladys and the Hospital? Explain fully.

Reminder: Write your answer to the ABOVE question #1 in Booklet A - the WHITE Booklet.

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2. Stan is an attorney practicing criminal law in Roanoke, Virginia. Ten days ago, he received an advance retainer of \$1,000 from a client, paid in cash with ten \$100 bills. Stan agreed to charge an hourly fee and deduct the fees as earned from the retainer. When that client left, Stan put a rubber band around the ten bills and set them on the corner of his desk, intending to account properly for it. However, he forgot about it and left it on his desk.

Throughout the next few days, Stan met with several other clients, the most recent one being Kevin. Kevin was a new client whom Stan had agreed to represent in a theft case for a fee of \$1,200, which was reasonable under the circumstances. At the end of the day, as Stan was leaving his office, he noticed that the packet of \$100 bills was not where he had placed them. He searched his office for the money but was unable to find it.

On the way home, Stan stopped at Kevin's home to have Kevin sign some papers connected with the case in which he was representing Kevin. Kevin's wife admitted Stan to the house and asked him to wait in the den while she went to the garage to tell Kevin that Stan was here. While waiting, Stan noticed in an open desk drawer a packet of currency bound by a rubber band. The bill visible on the top of the packet was a \$100 bill. Stan, believing that the packet was the \$1,000 he had set on the corner of his desk and that Kevin had taken it from his office, put the money in his pocket. When he finished conducting his business with Kevin, Stan left without saying anything to Kevin about the money.

As it turns out, the packet of money Stan removed from Kevin's desk drawer contained \$1,200 in \$100 bills and was money Kevin's wife had withdrawn from her savings account and given to Kevin to pay Stan's fee. The next day, Kevin told Stan that he would be unable to pay the \$1,200 fee until later because someone had stolen the money his wife had given him for that purpose. Stan, still believing that Kevin had taken the \$1,000 from Stan's office, said, "All right, here's what I'll do. If you can deliver \$1,000 to me by tomorrow, I'll reduce my fee from \$1,200 to \$1,000." Stan figured the total of \$2,200 would be a wash: it would restore the \$1,000 he believed Kevin stole from his office, plus the extra \$200 in the packet he had taken from Kevin's house, plus the additional \$1,000 Kevin would pay him, thus still netting him a \$1,200 fee.

The next day, Kevin delivered and Stan accepted the additional \$1,000. Stan never disclosed to Kevin that he had taken the money from Kevin's desk drawer.

- (a) If the Commonwealth tries Stan on charges of grand larceny, what defense, if any, does Stan have, and what is the probable outcome? Explain fully.
- (b) What ethical violations, if any, did Stan commit by his actions? Explain fully.

Reminder: Write your answer to the above question #2 in Booklet A - the WHITE Booklet.

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→→ Now **SWITCH** to the **YELLOW** Answer Booklet - Booklet B ←←

Write your answer to Questions 3 and 4 in Answer Booklet B - (the **YELLOW** booklet).

3. In 1995, Billy Wharton (“Wharton”) inherited Old Home from his mother. Since then, he has lived at Old Home with his wife, Cindy, and their children. That year, Wharton leased from Mary Murray the surrounding acreage known as Bestlands, on which Wharton has continuously grown tobacco and corn. Murray has never recorded as a public record any document relating to the lease.

In 1998, when Wharton’s farming business was thriving, he conveyed Old Home to “Billy Wharton and his wife, Cindy Wharton, in consideration of love and affection, as tenants by the entirety.”

Commencing in 2000, and continuing intermittently, a drought devastated Wharton’s crops, and over time he fell in arrears on his rent payments to Murray. He now owes her back rent of \$10,000.

In late 2003, Wharton borrowed \$5,000 from Farmers & Merchants Bank (“Bank”) with the intention of using the money to pay part of what he owed Murray. Wharton granted Bank a security interest in “all crops growing on Bestlands” as collateral for the loan. Bank properly filed all documents necessary to perfect its security interest in the crops as granted by Wharton.

Instead of using the borrowed funds to pay Murray, Wharton used the money as a down payment on a new pickup truck. He financed the balance with Friendly Financial Services (“FFS”), which retained legal title to the truck to secure the payment of the balance.

Although he continues to farm Bestlands, Wharton’s debts now exceed his assets. He owes Murray \$10,000 in back rent, he has defaulted on the loan from Bank, and he has missed several months’ payments to FFS on the pickup truck. FFS lawfully repossessed the pickup truck. Wharton went to FFS’s office, tendered in cash the entire amount of the delinquent payments, promised he would thereafter keep the payments current, and requested that FFS return the truck to him. FFS refused.

Today, Wharton was served with the following papers: (1) a distress warrant filed by Murray for \$10,000 past due rent, by which Murray is seeking an order for seizure and sale of the crops on Bestlands to satisfy the rent obligation; (2) an action by Bank to foreclose its security interest in the crops; and (3) a letter from FFS that it plans to sell the truck at an auction in five days and sue Wharton for any deficiency.

- (a) What kind of interest, if any, does Murray have in the crops, and, as between Murray’s interest and Bank’s interest, whose interest has priority? Explain fully.

This question continues on the next page.

- (b) Did FFS violate Wharton's rights by refusing to return the truck to him? Explain fully.
- (c) Can Murray, Bank, and FFS, or any of them, force the sale of Old Home to satisfy any deficiency judgment? Explain fully.

Reminder: Write your answer to the above question #3 in Booklet B - the YELLOW Booklet.

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4. Bill Smith and George Jones are next door neighbors in Roanoke, Virginia. Bill admired a ruby ring that George occasionally wore. George told Bill the ruby in the ring was a top quality gemstone worth \$1,000 but that he would sell the ring to Bill for \$500. Unknown to Bill, but known to George, the ruby was a flawed stone, and the ring was worth only about \$25.

On May 1, George delivered the ring to Bill in exchange for Bill's promissory note for \$500, which Bill said he would pay on May 31. The note was undated, did not mention any interest rate, and stated only, "I promise to pay to the order of George Jones the sum of \$500. /s/ Bill Smith."

George, intending to give the promissory note to his son as a gift, endorsed it in blank, "/s/George Jones." Before he was able to deliver it to his son, George lost the note.

Whitey Jackson, a stranger, found the note. Without endorsing the note, Whitey transferred possession of it to Opie Taylor in exchange for \$350 cash. Opie did not know how Whitey had acquired the note, and Whitey has disappeared.

It is now May 25, and Opie wishes to present the note for payment.

- (a) Against whom, if anyone, can Opie enforce the note? Explain fully.
- (b) What claims or defenses, if any, can Bill assert either on or off the note against George and Opie? Explain fully.
- (c) Does George have any rights against Opie to recover the note or its value? Explain fully.

Reminder: Write your answer to the above question #4 in Booklet B - the YELLOW Booklet.

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→→ Now **SWITCH** to the **SALMON** Answer Booklet - Booklet C ←←

Write your answer to Question 5 in Answer Booklet C - (the Salmon booklet).

5. C. Wellington Parker, III, whom everyone refers to as "Welly," is a successful and well-recognized antique dealer in Northern Virginia. Welly sent his college-aged nephew, Franklin, to an art auction at Regency Auctions, Inc. ("Regency"), which is located in Alexandria, Virginia, about an hour and a half away by automobile from Welly's stores.

Welly wanted Franklin to do two things. The first thing was to bid on a valuable painting entitled "Girl Holding White Rose" that Regency had advertised it would sell at auction, at the request of First Commonwealth Bank as executor of the Estate of the late I. M. Rich. Welly did not want to appear personally at the auction for fear that his presence would drive up the prices bid by others for this painting. Although Welly did not expressly tell Franklin so, Welly believed that no painting by the artist of Girl Holding White Rose was worth more than \$10,000. Welly gave Franklin \$10,000 in cash to cover what Welly privately thought would be the outside price for the painting.

Regency's standard terms of sale, which were confirmed by its auctioneer prior to the bidding, were payment in full by cash or certified check by close of business on the day of the auction. Before bidding, each bidder was asked to sign the register, stating his or her name and address. Franklin, as instructed by Welly, signed Franklin's own name and listed his college address, where he gets most of his mail.

To Franklin's surprise, there was considerable interest in the painting of the young girl and the bidding was vigorous, quickly exceeding the amount of cash he was carrying. Nonetheless, knowing his uncle's interest in the painting, Franklin continued bidding and was the successful bidder at a purchase price of \$12,000.

The second thing Welly had instructed Franklin to do was to sell an antique clock for which Welly knew there would be interested buyers in the private sale area of the auction site. Welly gave Franklin the clock to take with him and told him that he would not accept less than \$3,000 but that Franklin should try hard to get \$4,000 for it. Welly promised Franklin a commission if he sold the clock. Franklin sold it to an eager buyer who paid \$6,000 for it. Franklin figured he could use the extra \$2,000 he had gotten for the clock, together with the \$10,000 Welly had given him, to pay Regency for the painting of the girl.

Intending to tell Welly about the events of the day, Franklin used his cell phone to call Welly. When Franklin told Welly about his having successfully bid \$12,000 on the painting, but before he could tell him about the \$6,000 he had gotten for the clock, Welly became irate, told Franklin to leave the auction and return home at once, and hung up the phone.

Since Franklin failed to claim the painting of the girl at the end of the day, Regency sold the painting at a second auction for \$10,000.

Franklin, figuring that he made a \$2,000 "profit" on the clock that Welly had not expected to receive, decided to keep the \$2,000 for himself as a commission.

- (a) Can Regency recover from Welly the \$2,000 difference between what Franklin had bid and what the painting had sold for at the second auction? Explain fully.
- (b) Is Franklin entitled to keep the \$2,000 from the sale of the clock for himself? Explain fully.

Reminder: Write your answer to the above question #5 in Booklet C - the SALMON Booklet.

End of Section One